



# House of Representatives

## File No. 1022

General Assembly

January Session, 2009

**(Reprint of File No. 109)**

Substitute House Bill No. 6450  
As Amended by House Amendment  
Schedule "A"

Approved by the Legislative Commissioner  
May 30, 2009

**AN ACT CONCERNING THE SETTLEMENT AMOUNT ON TOTALLED  
MOTOR VEHICLES AND INCREASING THE INTEREST RATE  
INCLUDED IN CERTAIN INSURANCE ARBITRATION AWARDS.**

Be it enacted by the Senate and House of Representatives in General  
Assembly convened:

1 Section 1. Section 38a-353 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective January 1, 2010*):

3 (a) Whenever any damaged motor vehicle covered under an  
4 automobile insurance policy has been declared to be a constructive  
5 total loss by the insurer, the insurer shall, in calculating the value of  
6 such vehicle for purposes of determining the settlement amount to be  
7 paid to the claimant, use at least the average of the retail values given  
8 such vehicle by (1) the National Automobile Dealers Association used  
9 car guide or any other publicly available automobile industry source  
10 that has been approved for such use by the Insurance Commissioner,  
11 and (2) one other automobile industry source [which] that has been  
12 approved for such use by [the Insurance Commissioner] said  
13 commissioner. For the purposes of this section, "constructive total loss"  
14 means the cost to repair or salvage damaged property, or the cost to

15 both repair and salvage such property, equals or exceeds the total  
16 value of the property at the time of loss.

17 (b) The insurer shall provide to the claimant, not later than the date  
18 the insurer pays the claimant the settlement amount for such vehicle,  
19 (1) a detailed copy of such insurer's calculation of such vehicle's  
20 constructive total loss value, (2) if applicable, a copy of any valuation  
21 report provided to the insurer by any automobile industry source that  
22 is not publicly available, and (3) a written notice disclosing that the  
23 claimant may dispute such settlement amount by contacting the  
24 Insurance Department. The written notice shall including the  
25 following statement, which shall appear in the final paragraph of the  
26 notice in not less than twelve-point type: "If you do not agree with this  
27 valuation, you may contact the Consumer Affairs Division within the  
28 Insurance Department". The notice shall include the address and toll-  
29 free telephone number for the division and the Insurance Department's  
30 Internet address.

31 Sec. 2. Subdivision (2) of subsection (b) of section 38a-9 of the  
32 general statutes is repealed and the following is substituted in lieu  
33 thereof (*Effective January 1, 2010*):

34 (2) The commissioner shall prepare a list of at least ten persons, who  
35 have not been employed by the department or an insurance company  
36 during the preceding twelve months, to serve as arbitrators in the  
37 settlement of such disputes. The arbitrators shall be members of any  
38 dispute resolution organization approved by the commissioner. One  
39 arbitrator shall be appointed to hear and decide each complaint.  
40 Appointment shall be based solely on the order of the list. If an  
41 arbitrator is unable to serve on a given day, or if either party objects to  
42 the arbitrator, then the next arbitrator on the list will be selected. The  
43 department shall schedule arbitration hearings as often, and in such  
44 locations, as it deems necessary. Parties to the dispute shall be  
45 provided written notice of the hearing, at least ten days prior to the  
46 hearing date. The commissioner may issue subpoenas on behalf of the  
47 arbitrator to compel the attendance of witnesses and the production of

48 documents, papers and records relevant to the dispute. Decisions shall  
49 be made on the basis of the evidence presented at the arbitration  
50 hearing. Where the arbitrator believes that technical expertise is  
51 necessary to decide a case, [he] such arbitrator may consult with an  
52 independent expert recommended by the commissioner. The arbitrator  
53 and any independent technical expert shall be paid by the department  
54 on a per dispute basis as established by the commissioner. The  
55 arbitrator, as expeditiously as possible, but not later than fifteen days  
56 after the arbitration hearing, shall render a written decision based on  
57 the information gathered and disclose the findings and the reasons to  
58 the parties involved. The arbitrator shall award filing fees to the  
59 prevailing party. If the decision favors the consumer the decision shall  
60 provide specific and appropriate remedies including interest at the rate  
61 of [ten] fifteen per cent per year on the arbitration award concerning  
62 the disputed amount of the claim, retroactive to the date of payment  
63 for the undisputed amount of the claim. The decision may include  
64 costs for loss of use and storage of the motor vehicle and shall specify a  
65 date for performance and completion of all awarded remedies.  
66 Notwithstanding any provision of the general statutes or any  
67 regulation to the contrary, the Insurance Department shall not amend,  
68 reverse, rescind, or revoke any decision or action of any arbitrator. The  
69 department shall contact the consumer within ten working days after  
70 the date for performance, to determine whether performance has  
71 occurred. Either party may make application to the superior court for  
72 the judicial district in which one of the parties resides or, when the  
73 court is not in session, any judge thereof for an order confirming,  
74 vacating, modifying or correcting any award, in accordance with the  
75 provisions of sections 52-417, 52-418, 52-419 and 52-420. If it is  
76 determined by the court that either party's position after review has  
77 been improved by at least ten per cent over that party's position after  
78 arbitration, the court, in its discretion, may grant to that party its costs  
79 and reasonable attorney's fees. No evidence, testimony, findings, or  
80 decision from the department arbitration procedure shall be  
81 admissible in any civil proceeding, except judicial review of the  
82 arbitrator's decision as contemplated by this subsection.

This act shall take effect as follows and shall amend the following sections:		
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Section 1	<i>January 1, 2010</i>	38a-353
Sec. 2	<i>January 1, 2010</i>	38a-9(b)(2)

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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***OFA Fiscal Note***

***State Impact:*** None

***Municipal Impact:*** None

***Explanation***

The bill as amended makes changes related to settlement amounts for totaled motor vehicles and does not result in a fiscal impact.

House "A" strikes the underlying bill replacing it with language that does not result in a fiscal impact.

***The Out Years***

None

**OLR Bill Analysis****sHB 6450 (as amended by House "A")\******AN ACT CONCERNING THE SETTLEMENT AMOUNT ON  
TOTALLED MOTOR VEHICLES.*****SUMMARY:**

Currently, when an insurer declares a covered damaged vehicle a "constructive total loss," the insurer must calculate the vehicle's value for determining the settlement amount by using at least the average of the retail values given by (1) the National Automobile Dealers Association (NADA) used car guide and (2) one other automobile industry source that the insurance commissioner has approved for such use. The bill allows the insurer to use any other publicly available automobile industry source the commissioner approves for such use rather than the NADA guide as one of the two sources for determining the vehicle's average retail value.

The bill also requires the insurer to give the claimant, by the time it pays the settlement amount:

1. a detailed copy of its calculation of the vehicle's constructive total loss value;
2. if applicable, a copy of any valuation report provided to the insurer by any automobile industry source that is not publicly available; and
3. a written notice disclosing that the claimant may dispute the settlement by contacting the Insurance Department.

The insurer's notice must include in its final paragraph in at least 12 point type the following statement: "If you do not agree with this

valuation, you may contact the Consumer Affairs Division within the Insurance Department.” The notice must give the division’s address, and toll-free phone number, and the department’s Internet address.

Finally, the bill increases from 10% to 15 % the interest an arbitrator used by the Insurance Department to resolve a settlement dispute between an insurer and claimant must award when the arbitration decision favors the consumer. By law, such interest applies to the disputed amount of the claim retroactive to the date of payment of the undisputed amount of the claim.

By law, a vehicle is a “constructive total loss” if the cost to repair or salvage it, or both, equals or exceeds the vehicle’s total value at the time of loss.

\*House Amendment “A” replaces the original bill (File 109) which modified the settlement calculation process by requiring the insurer to use the claimant’s choice of three methods. It also established certain requirements when an insurer offers a claimant a replacement vehicle instead of a cash settlement.

EFFECTIVE DATE: January 1, 2010

## **COMMITTEE ACTION**

Insurance and Real Estate Committee

Joint Favorable Substitute

Yea 14 Nay 4 (03/05/2009)